IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2006

Coram

The Hon'ble Mr. Justice A.KULASEKARAN

Writ Petition No. 14752 of 2003

1. M.Subbalakshmi
2. M.Ramalakshmi
3. M.Krishnaveni
4. M.Shyam Sankar .. Petitioners

Vs.

1. The Presiding Officer,
   Labour Court, Tirunelveli.

2. The Chairman,
   Tamilnadu Electricity Board,
   rep. by its Superintending Engineer,
   Tirunelveli Kattabmman Electricity
   Distribution Circle,
   Tirunelveli 627 011. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus as stated therein.

For Petitioner : Mr.S.Vaidyanathan
For Respondents : Mr.V.Yamuna Devi
Standing Counsel for R2

O R D E R

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This writ petition is filed for the issuance of a writ of certiorarified mandamus, calling for the records from the first respondent Labour Court relating to its order dated 21.10.2002 in I.A.No.56 of 2001 in I.D.No.146 of 1994 on the file of first respondent, quash the same and consequently direct the second respondent to implement the award dated 16.06.2000 in I.D.No.146 of 1994 by granting all benefits due to deceased Mookiah, to the legal heirs i.e. the petitioners, on the date of death of Mookiah on 14.2.2001 together with interest at 12% p.a. till the date of actual payment.

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2. The writ petition falls on narrow scope. The petitioners are the legal heirs of the workman Mookiah, who was dismissed from service on 31.08.1987, which was challenged by him by filing I.D.No.146 of 1994 before the first respondent/labour Court, Tirunelveli. An ex parte award was passed on 16.06.2000 and the same was published in the Government gazette on 01.08.2000. It is needless to mention that the said award has been coming into force after the expiry of 30 days i.e. from 01.09.2000. The second respondent/Electricity Board has filed I.A.No.56 of 2001 on 24.10.2000 to condone the delay of 117 days in filing a petition to set aside the ex parte award and the same was allowed. Hence, the present writ petition.

3. Mr.S.Vaidyanathan, learned counsel appearing for the petitioner submitted that once an award was published and a time of 30 days also lapsed, the award became enforceable under Section 17-A of the Industrial Disputes Act. While so, it is not open to the first respondent/labour Court to entertain any application either to condone the delay in filing an application to set aside the ex parte award or to set aside the ex parte award since it became functus officio. In support of his contention, the learned counsel has relied on the decision of the Supreme Court in Sangham Tape Company v. Hans Raj, reported in 2004 (5) CTC 104.

4. Ms.V.Yamuna Devi, learned counsel appearing for the second respondent Electricity Board submitted that the reasons assigned by the second respondent for condoning the delay were duly considered by the labour Court, in the light of the decision mentioned in its order and it rightly allowed the same. It is further submitted by the counsel that the petitioner is in no way affected since I.A.No.56 of 2001 is relating to condoning the delay, which would not amount to modification of the award until another I.A. is filed and an order is passed thereon and prayed for dismissal of the writ petition.

5. I have carefully considered the arguments made by both sides and also perused the materials available on record.

6. It is not in dispute that the ex parte award was passed on 16.06.2000; the same was published on 01.08.2000; from 01.09.2000 onwards that award has been coming into force in view of Section 17-A of the I.D. Act; the second respondent has filed I.A.No.56 of 2001 on 24.10.2000 seeking for condoning the delay of 117 days in filing the application to set aside the award; and the same was allowed by the labour Court. Assuming that the said I.A. is only to condone the delay, even that cannot be entertained by the labour Court, because the award came into force as per Section 17-A of the I.D. Act. The judgment relied on by the learned counsel appearing for the petitioner in Sangham Tape Company v. Hans Raj, reported in 2004 (5) CTC 104, is squarely applicable to the facts and circumstances of the present case, wherein their Lordships have held in paragraphs 7 and 8 as follows:

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7. This Court in Grindlays Bank Ltd. v. Central Government Industrial Tribunal and Others. 1980 Supp. SCC 420 held that the Tribunal does not become functus officio provided an application for setting aside the award is filed within thirty days of publication of award having regard to the provisions contained in Section 11 of the Act and Rules 22 and 24 of the Industrial Disputes (Central) Rules, 1957 stating:

> "The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the ex parte award and that the Central Government alone could set it aside, does not commend to us. Sub-section (3) of Section 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under Section 17-A. Under Section 17-A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17. The proceedings with regard to a reference under Section 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and up to that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under Section 17-A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent 3, acting on behalf of respondents 5 to 17 on January 19, 1977 i.e. before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal..."

8. The said decision is therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an ex parte award but having regard to the provision contained in Section 17-A an application therefor must be filed before the expiry of 30 days from the publication thereof. Till then Tribunal retains jurisdiction over the dispute referred to it for adjudication and only upto that date, it has the power to entertain an application in connection with such dispute.

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7. In view of the above discussions, I.A.No.56 of 2001 to condone the delay of 117 days in filing the petition to set aside the ex parte award ought not to have been entertained by the labour Court and hence, the order passed by the labour Court is set aside. The writ petition is allowed as prayed for. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ATR

To

1. The Presiding Officer,
   Labour Court, Tirunelveli.

2. The Chairman,
   Tamilnadu Electricity Board,
   rep. by its Superintending Engineer,
   Tirunelveli Kattabmman Electricity
      Distribution Circle,
   Tirunelveli 627 011.

1 cc To Mr.S.Vaidyanathan, Advocate, SR.36137.
1 cc To Mr.V.Yamuna Devi, Advocate, SR.36424.

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